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STATE OF NORTH CAROLINA



GOVERNMENTAL EVALUATION COMMISSION REPORT

ON

MINING REGISTRATION ACT OF 1969

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INSTITUTE OF GOVERNMENT
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SUMMARY

As directed by Chapter 143, Article 1.1 of the General Statutes, The Governmental Evaluation Commission has conducted its evaluation of the Mining Registration Act of 1969.

The Mining Registration Act of 1969 established an inventory of existing mining operations in the State by requiring the registration of mines so as to identify the name, location, and the extent of land disturbance caused by these mines. This inventory has been completed.

The objectives of the Mining Registration Act have been accomplished, and its functions are now carried out under the Mining Act of 1971. The Commission concludes that no harm will result if the Act is repealed.

The Commission recommends that the program created by Chapter 74, Article 6 of the General Statutes, entitled "*MINING REGISTRATION*", not be continued.



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Governmental Evaluation Commission
Report on Mining Registration

RECOMMENDATION:

The Commission recommends that Chapter 74, Article 6, of the General Statutes, entitled "MINING REGISTRATION", not be continued.

CONCLUSION:

The objectives of the Mining Registration Act of 1969 have been accomplished. The registration requirements of the Act are now being required under the Mining Act of 1971. The Commission concludes that no harm will result if the Act is not continued.

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FINDINGS:

The Mining Registration Act of 1969 was enacted to establish an inventory of existing mining operations in the State. The principal objective of the Act was to identify the name, location and the extent of land disturbance of mines in North Carolina. The Registration Act served to establish an initial inventory for permitting and reclamation monitoring that was to be carried out under the Mining Act of 1971.

The Act required the owner of every operation that affected more than one-quarter acre to secure a registration certificate. The registration required information such as: (1) the name of owner and operator; (2) number of employees of the operation; (3) maps to show property lines or affected area of the mining operation; (4) number of years operation has existed; (5) estimated number of years it is expected to continue; and (6) a summary of present and proposed conservation and land reclamation plans and procedures, if any.

The Mining Act of 1971 has superseded the Mining Registration Act. Once the initial inventory of existing operations was completed, there no longer existed a need for the Registration Act. The objectives of the Mining Registration Act of 1969 were accomplished prior to the enactment of the Mining Act of 1971. The Registration Act is no longer being enforced.

INTRODUCTION TO GOVERNMENTAL EVALUATION COMMISSION

Chapter 143, Article 1.1, of the General Statutes terminates the regulation of various occupations. By repealing the laws establishing them, a number of boards and commissions that license or regulate occupations are scheduled to be terminated every two years. One-third of the total of these agencies will cease to exist on July 1, 1979, unless re-established by the General Assembly.

The statute requires that prior to termination each agency be reviewed by the Governmental Evaluation Commission. The Commission is charged with conducting a "performance evaluation of each program or function scheduled for termination."

Upon completion of the evaluation, the Commission will submit a report to the General Assembly, including a recommendation as to whether the program or function in question, and the responsible agency, "should be terminated, reconstituted, re-established, or continued with or without modification of the relevant statutes."

The statute states that the Commission's basic determination is "*of the need for continuance of an agency program or function*", and that it shall use 13 listed evaluation elements in making its determination. The Commission is not limited to the use of the 13 elements in determining the presence of a public need for the continuance of a program or agency.

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The Commission was authorized to employ a staff to help it in its work. The staff will conduct an evaluation and report its findings to the Commission in a staff report. The agencies may be given the opportunity to appear before the Commission and respond to the staff report. After making any modifications it believes desirable, the Commission will adopt a Proposed Commission Report.

The statute requires that public hearings be held on the proposed report, after a notice of the substance of the report and other details of the hearing is published. Upon completion of the hearing and consideration of the submitted evidence and arguments with respect to this evaluation, the Commission shall adopt its final recommendations. These recommendations will then be submitted to the General Assembly for its deliberation.

SCOPE OF THE EVALUATION

The purposes of the evaluation process are stated in the statute creating the Governmental Evaluation Commission.

§143-34.10. Findings and purposes. - The General Assembly finds that state government actions have produced a substantial increase in numbers of agencies, growth of programs, and proliferation of rules and regulations and that the whole process developed without sufficient legislative oversight, regulatory accountability, or a system of checks and balances. The General Assembly further finds that by establishing a system for the termination, continuation, and re-establishment of such agencies, it will be in better position to evaluate the need for the continued existence of existing and future regulatory bodies.

A recommendation on the "need for the continued existence of existing....regulatory bodies" is the end product of this evaluation process. An evaluation of "need" for the continued existence must focus on the public benefits resulting from the continued existence of a program or agency. The benefits to the persons the agency regulates are not reasons for continuing the agency.

In focusing on "need" the inevitable question that must be considered is: What is the harm to the public if there is no regulation of the occupation?

It can be argued that some possible harm is present in allowing unlicensed persons to serve the public in any occupation or capacity. There is always some risk that a member of the public will choose the wrong person in a selection process where there is no knowledge of competency or honesty. However, this selection process is a hallmark and strength of the free enterprise system.

On the other hand, regulation in any form, by any means, is

restrictive of certain individual liberties protected by Article 1.1 of the North Carolina Constitution, which provides that all persons are afforded rights of "life, liberty, and the enjoyment of the fruits of their on labor, and the pursuit of happiness." The state, through its police power, may enact legislation which invades these rights only if there is a real and substantial relationship between the legislation and the protection of the public health, safety, or welfare.

In the evaluation process, the underlying question asked by the legislature can be stated: Is this regulation a proper exercise of the state's police power? Is the public need for regulation sufficient to justify making available to the regulatory body the authority of the State of North Carolina to imprison, to fine, and to deprive the right of earning a living to a person who violates the regulatory statute? The regulatory statute makes available to the agency, for enforcement, the State Judiciary, the State Attorney General, the police, and the power to collect money for use of the agency.

The evaluation question to be answered could be stated another way: Does this regulatory statute protect the public from potential serious harm so that if there were no statute, serious harm would be done to the public's health, safety, or welfare?

The key words are "serious harm". If the answer to the evaluation question is "No", then there is no public need for the program or agency and the statute must not be continued.

If the answer is "Yes", then the Commission must look at all parts of the program and agency to determine if they are doing what the statute

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calls for them to do in an efficient and effective manner.

The General Assembly is the final authority on the recommendations of the Commission. A Committee of Reference in each House of the General Assembly will hold a public hearing on the recommendations relating to each agency. In the hearing the agency has the burden of demonstrating a public need for the continued existence of the agency and its program or function.

HISTORICAL BACKGROUND OF MINING REGISTRATION STATUTE

North Carolina is said to possess the greatest variety of minerals and rocks of any state in the Union.

Gold was discovered as early as 1799, with systematic mining beginning around 1802. In fact, from 1804 to 1828, North Carolina produced all the gold mined in the United States.

Although not as glamorous as gold mining, the State led the nation in 1972 in the production of minerals such as lithium, mica and feldspar. The most valuable mineral resources in the State, however, are stone and clay material.

Mineral production in North Carolina has been steadily increasing. In 1965, 36,810 acres of land in North Carolina were disturbed by surface mining. Of these acres, an estimated 22,800 required reclamation of some type. Although these figures are low compared to some states, they sparked movement toward legislative control to protect the State from potential abuses by its own mining industry.

In 1967, the State became a member of the Interstate Mining Compact. North Carolina was committed to formulate an effective program for the conservation and use of mined land. As a result of this charge, the North Carolina Mining Council was created.

The Council conducted investigations as well as public hearings in an attempt to define the problem present in North Carolina. It concluded that the state had no major problem with respect to its surface mining (at least not as compared with other states), but suggested that precautions be taken. The Council issued a report which made separate

recommendations for the 1969 and 1971 legislative sessions. It was recommended that the 1969 General Assembly adopt a surface mining registration act. The Council further suggested that the 1971 General Assembly,(a) designate a state agency to regulate the mining industry; (b) designate legal responsibility for the reclamation of mined out lands; (c) adopt an expanded licensing program that required a proposal of conservation and land reclamation procedures to accompany an application for licensing.

The General Assembly adopted the recommendations of the Council and in 1969 enacted the Mining Registration Act of 1969, and in 1971, enacted the Mining Act of 1971 in an effort to curb the potential mining hazards to the state's natural resources.

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EVALUATION ELEMENTS

The statute lists 13 evaluation elements to be used in making a determination of the need for continuance of an agency program or function. The statute specifically allows other evaluation elements to be used.

The performance evaluation of the Mining Registration Act of 1969 using the 13 elements follows:

EVALUATION ELEMENT #1

AN IDENTIFICATION OF THE OBJECTIVES INTENDED FOR THE AGENCY PROGRAM AND THE PROBLEM OR NEED WHICH THE PROGRAM WAS INTENDED TO ADDRESS.

G.S. 74 Article 6 does not include a statement of objectives intended for the agency program.

EVALUATION ELEMENT #2

AN ASSESSMENT OF THE DEGREE TO WHICH THE ORIGINAL OBJECTIVES OF THE AGENCY PROGRAM HAVE BEEN ACHIEVED EXPRESSED IN TERMS OF PERFORMANCE, IMPACT, OR ACCOMPLISHMENTS OF THE PROGRAM AND OF THE PROBLEM OR NEED WHICH IT WAS INTENDED TO ADDRESS. SUCH ASSESSMENT SHALL EMPLOY PROCEDURES OR METHODS OF ANALYSIS WHICH THE COMMISSION DETERMINES TO BE APPROPRIATE TO THE TYPE OR CHARACTER OF THE PROGRAM.

The original objective of the Mining Registration Act of 1969 has been accomplished. The problem intended to be addressed by the agency was one of identifying all existing mining operations in the state. The results of the inventory conducted under the Mining Registration Act were used in the implementation of the Mining Act of 1971.

EVALUATION ELEMENT #3

A STATEMENT OF THE PERFORMANCE AND ACCOMPLISHMENTS OF THE AGENCY PROGRAM IN THE LAST FISCAL YEAR AND OF THE BUDGETARY COSTS INCURRED IN THE OPERATION OF THE PROGRAM.

The Mining Registration Act of 1969 has been inoperative since 1971. There is no program currently carried out under the Act.

EVALUATION ELEMENT #4

A STATEMENT OF THE NUMBER AND TYPES OF PERSONS
SERVED BY THE AGENCY PROGRAM.

There is no agency program administered under G.S. 74 Article 6.

EVALUATION ELEMENT #5

A SUMMARY STATEMENT, FOR THE LAST COMPLETED FISCAL
YEAR, OF THE NUMBER BY GRADE, AND COST OF PERSONNEL
EMPLOYED IN CARRYING OUT THE AGENCY PROGRAM AND A
SUMMARY STATEMENT OF THE COST OF PERSONNEL EMPLOYED
UNDER CONTRACT IN CARRYING OUT THE PROGRAM.

There is no program administered under G.S. 74 Article 6.

EVALUATION ELEMENT #6

AN ASSESSMENT OF THE DEGREE TO WHICH THE OVERALL
POLICIES OF THE AGENCY PROGRAM, AS EXPRESSED IN THE RULES,
REGULATIONS, ORDERS, STANDARDS, CRITERIA, AND DECISIONS
OF THE AGENCY MEET THE OBJECTIVES OF THE GENERAL ASSEMBLY
IN ESTABLISHING THE PROGRAM.

The objectives of G.S. 74 Article 6 have been achieved.

EVALUATION ELEMENT #7

AN ASSESSMENT OF THE EFFECT OF THE AGENCY PROGRAM
ON THE STATE ECONOMY INCLUDING COSTS TO CONSUMERS
AND BUSINESSES.

There is no program administered under G.S. 74 Article 6.

EVALUATION ELEMENT #8

AN EVALUATION OF THE REPORTING AND RECORD-KEEPING
REQUIREMENTS AND ACTIVITIES OF THE AGENCY PROGRAM
INCLUDING THE MANAGEMENT AND CONTROL OF INFORMATION
AND RECORDS AND THE VALUE OF THE INFORMATION GATHERED
COMPARED TO THE COST TO RESPONDENTS, AND AN ASSESSMENT
OF METHODS TO REDUCE AND SIMPLIFY THE REPORTING AND
RECORD-KEEPING REQUIREMENTS.

There are no agency activities currently implemented under G.S. 74 Article 6.

EVALUATION ELEMENT #9

A SUMMARY STATEMENT OF THE BUDGET AND PROGRAM OF THE AGENCY FOR THE CURRENT FISCAL YEAR AND BUDGET PROJECTIONS FOR THE NEXT SUCCEEDING FISCAL YEAR IF THE PROGRAM WERE TO BE CONTINUED.

There is no agency program under G.S. 74 Article 6.

EVALUATION ELEMENT #10

AN ASSESSMENT OF WHETHER THE AGENCY HAS PERMITTED QUALIFIED APPLICANTS TO SERVE THE PUBLIC, AND WHETHER THE AGENCY HAS ENCOURAGED PARTICIPATION BY THE PUBLIC IN MAKING ITS RULES AND DECISIONS, AS OPPOSED TO PARTICIPATION SOLELY BY THE PERSONS IT REGULATES.

There is no operative agency under G.S. 74 Article 6,

EVALUATION ELEMENT #11

AN EVALUATION OF THE EXTENT TO WHICH OPERATION HAS
BEEN EFFICIENT AND RESPONSIVE TO PUBLIC NEEDS.

The Mining Registration Act of 1969 is no longer operative.

EVALUATION ELEMENT #12

AN EVALUATION OF THE EXTENT TO WHICH COMPLAINTS
HAVE BEEN EXPEDITIOUSLY PROCESSED TO COMPLETION
IN THE PUBLIC INTEREST.

The Mining Act of 1969 is no longer operative, consequently
there are no complaints handled under the Act.

EVALUATION ELEMENT #13

AN ANALYSIS OF THE SERVICES AND PERFORMANCE ESTIMATED
TO BE ACHIEVED IF THE AGENCY OR AGENCY PROGRAM WERE
CONTINUED.

The objectives of the Act have been achieved and there are no
services left to be performed thereunder.

